



**Order under Section 69  
Residential Tenancies Act, 2006**

**Citation:** Zhang v Matheson, 2024 ONLTB 12114

**Date:** 2024-02-21

**File Number:** LTB-L-024062-22

**In the matter of:** 28, 1 LEGGOTT AVE BARRIE  
ON L4M0K7

**Between:** Yunhe Zhang Landlord

**And**

Ashley Matheson Tenant

Yunhe Zhang (the 'Landlord') applied for an order to terminate the tenancy and evict Ashley Matheson (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 11, 2024. The Landlord attended the hearing and was represented by Julie Jing Zhu. The Tenant attended the hearing and was represented by Robin MacLeod.

**Determinations:**

1. The Landlord's application was filed on April 28, 2022 and is based on a N4 notice of termination served to the Tenant on April 5, 2022 with a termination date of April 24, 2022.
2. The parties agree that the lawful rent was \$1,900.00 per month and that it was due and payable on the 4<sup>th</sup> day of each month.
3. The parties agree that as of the hearing date, the tenancy has terminated.
4. The following issues were in dispute at the hearing:
  - Did the Tenant pay a last month rent deposit to the prior landlord?
  - The date the tenancy terminated.
  - Amount of arrears owing

Deposit:

5. The tenancy commenced on or about September 2021. The Landlord on this application purchased the rental property on April 4, 2022 and assumed the tenancy as of this date.
6. The L1 application asserts that no deposit is being held by the Landlord. The Landlord testified that at the time of purchasing the rental unit, the prior landlord did not advise of a deposit being held and further did not transfer over any funds for the deposit.
7. The Tenant testified that she paid a last month rent deposit to the prior landlord (Robert Fiore) in the amount of \$1,900.00 at the commencement of the tenancy. The Tenant did not submit into evidence any lease agreement, bank records or receipts confirming that these alleged funds were paid.
8. Based on the evidence and submissions before the Board I am not satisfied that the Tenant has paid a last month's rent deposit to the prior landlord, nor am I satisfied that the current Landlord is holding a deposit.
9. In *Mauti v. Gibbs, 2019 ONSC 3355 (CanLII)*, the Divisional Court held at paragraph 27 that while the Landlord bears the burden of proof in a rent arrears application, it is difficult for a landlord to prove a negative (i.e. non-payment of rent). Therefore, ". . .while the ultimate persuasive burden never shifts, once a landlord denies receiving funds, the tenant will have an evidentiary burden or a chance to advance some evidence to positively prove that he or she paid rent."
10. Although the above noted case speaks to a dispute in payment of rent, I find that the same test and/or principle applies when there is a dispute over a deposit being paid. The Tenant is the one alleging that she paid a last month's rent deposit at the commencement of the tenancy and the Landlord is disputing that a deposit was paid and/or being held.
11. As stated above, the Tenant provided insufficient evidence to support that she paid a deposit to the prior landlord at the commencement of the tenancy. The prior landlord was not present at the hearing to give testimony on behalf of either party and the Tenant provided no receipts, bank records or written correspondence from the prior landlord to confirm that a deposit was in fact paid.
12. As such, I find that there is no deposit being held by the Landlord.

Date the Tenant vacated:

13. Although both parties agree that the tenancy has terminated, the parties are in dispute as to the date the Tenant vacated the rental unit.
14. The Tenant takes the position that the tenancy terminated on June 15, 2022. The Landlord takes the position that the tenancy terminated on January 4, 2023, which is the date the Landlord allegedly discovered that the Tenant had vacated the rental unit.
15. The parties agree that the matter was previously scheduled for a hearing before the Board on January 4, 2023 and that this hearing was adjourned due to insufficient time in the

hearing block. At this hearing, the Tenant advised the Landlord that they were no longer residing in the rental unit.

16. The parties further agree that on June 2, 2022 the Landlord's legal representative sent to the Tenant a letter providing the Tenant with two options to settle the arrears of rent owing. The first offer was for the Tenant to vacate the rental unit by June 5, 2022, in which the Landlord would withdraw their L1 application. The second offer was for the Tenant to vacate by June 30, 2022, in which the Landlord would only seek one-months rent owing from the Tenant.
17. The Tenant testified that she vacated the rental unit on or about June 15, 2022 and moved in with her sister. The Tenant agrees that she did not advise the Landlord that she had moved out of the rental unit and stated that she left the keys in the garage.
18. The Landlord stated that the Tenant only advised that she had vacated the unit at the January 4, 2023 hearing date and that prior to this date his legal representative had been in communications with the Tenant's representative and that at no point did the Tenant's representative advise that her client had vacated the unit.
19. On July 4, 2022, the Landlord's representative sent an email to the Tenant's representative following up on the offer to settle sent on June 2, 2022. The Tenant's representative responded on July 5, 2022 stating that her client had not vacated the rental unit.
20. The Landlord's representative also sent the Tenant's representative notices to enter the rental unit on July 26, 2022, August 5 & 22, 2022 and on October 13 & 14, 2022. The Tenant's representative did not respond to any of the emails or advise that her client had vacated the rental unit.
21. The Tenant's representative stated that her email sent on July 5, 2022 contained a typo and that she intended to state that her client had moved out of the rental unit. The Tenant's representative stated that during this period, her husband was terminally ill and as such, she was not fully focused on her legal practice and neglected to respond to the Landlord's notices and/or inquires, correct her prior email sent or advise the Landlord's representative that her client had in fact vacated the unit.
22. On cross examination the Landlord agreed that from July 2022 to October 2022 he entered the rental unit approximately 9 times to conduct repairs and renovations to the unit. The Landlord confirmed that the Tenant was not present during any of these visits and that majority of the Tenant's furniture had been removed from the rental unit. The work conducted included removing and replacing the main floors, sanding, and refinishing the stairs, patching holes in the drywall and replacing the toilet in the bathroom.
23. Based on the evidence and submissions before the Board, I find that the Tenant vacated the rental unit on June 15, 2022 and as such, the tenancy is terminated as of this date.
24. In *1162994 Ontario Inc. v. Bakker, 2004 CanLII 59995 (ON CA)*, the Ontario Court of Appeal determined that "possession of a rental unit refers to some form of control over that

unit as demonstrated by factors such as access to, use of, or occupation of the unit.” 25. I accept the Tenant’s evidence that she vacated the unit on this date as per the Landlord’s offer to settle the matter, the Tenant’s testimony was consistent throughout the hearing that she vacated in accordance with the offer received by the Landlord’s representative. Although the Tenant’s representative advised on July 5, 2022 that her client had not vacated the unit, the Tenant’s representative provided a reasonable explanation for her incorrect statement and the Landlord provided insufficient evidence to suggest that the Tenant was in fact residing in the rental unit on or after June 15, 2022.

26. I further note that the Landlord’s own evidence confirms that the Landlord attended the rental unit on many occasions from the months of July 2022 to October 2022 and that the Landlord conducted extensive repairs and/or renovations to the rental unit over the course of several weeks. The repairs and/or renovations conducted by the Landlord are not typical when a tenant is still residing in the rental unit and the Landlord’s own evidence also confirms that the Tenant was not present during any of the entries nor was there obvious signs of someone residing in the rental unit. I find that the Landlord knew or ought to have known that the Tenant had vacated the rental unit during the period noted above.

Arrears of rent:

27. The Landlord’s application claims arrears of rent for the period of April 4, 2022 to May 3, 2022 in the amount of \$1,900.00.
28. The Tenant has made no payments to the Landlord since the application was filed.
29. The Landlord incurred \$186.00 for the costs of filing the application and is entitled to reimbursement of those costs.
30. Based on the evidence before the Board I find that the Tenant owes to the Landlord \$749.52 in rent arrears. This amount represents rent owing for the period of June 4, 2022 to June 15, 2022.
31. There is no dispute that the Landlord’s representative sent an offer to the Tenant on June 2, 2022 advising that if the Tenant vacated the rental unit on or before June 30, 2022 that the Landlord would waive arrears of rent owing for the months of April and May 2022. As stated above, I find that the Tenant vacated the rental unit on June 15, 2022 and as such, complied with the Landlord’s offer.
32. As the Landlord served the Tenant with a notice of termination and filed an application to terminate the tenancy under the Act, I find that the Tenant is only liable for arrears owing to the date she vacated the rental unit.

**It is ordered that:**

**File Number:** LTB-L-024062-22

1. The tenancy between the Landlord and the Tenant is terminated as of June 15, 2022, the date the Tenant moved out of the rental unit.
2. The Tenant shall pay to the Landlord \$935.52. This amount includes rent arrears owing from June 4, 2022 to June 15, 2022 and the costs of filing the application.
3. If the Tenant does not pay the Landlord the full amount owing on or before March 3, 2024, the Tenant will start to owe interest. This will be simple interest calculated from March 4, 2024 at 7.00% annually on the balance outstanding.

**February 21, 2024**

**Date Issued**

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Fabio Quattrociochi

Member, Landlord and Tenant Board

15 Grosvenor St, Ground Floor Toronto  
ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.